

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MAMULASHVILI v. GEORGIA

(Application no. 15355/15)

JUDGMENT

STRASBOURG

4 July 2024

This judgment is final but it may be subject to editorial revision.



In the case of Mamulashvili v. Georgia,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Carlo Ranzoni*, President*,
Lado Chanturia,
María Elósegui*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 15355/15) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 11 March 2015 by a Georgian national, Mr Zaza Mamulashvili ("the applicant"), who was born in 1970, lives in Tbilisi and was represented by Ms T. Dekanosidze and eight other lawyers practising either in Georgia or the United Kingdom;

the decision to give notice of the complaints under Article 3 of the Convention to the Georgian Government ("the Government"), represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice, and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 13 June 2024,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns, under Article 3 of the Convention, the applicant's alleged ill-treatment in prison, which purportedly formed part of a large-scale and systematic ill-treatment of prisoners by representatives of the prison authority at the material time, and the competent domestic authorities' failure to conduct an effective investigation into his allegations.

2. In September 2012 a footage of repeated acts of ill-treatment of inmates at different prison establishments, including Tbilisi Prison no. 8 ("Gldani Prison") and Medical Prison Establishment no. 18 ("the prison hospital"), was disseminated in the Georgian media ("the prison scandal").

3. On 14 November 2012 the applicant, who had been serving an eleven year's prison term for illicit possession of drugs, filed a criminal complaint with the Chief Public Prosecutor's Office ("the CPPO") and requested that an investigation be launched into ill-treatment to which he had allegedly been subjected in the prison hospital on 29 August 2012. He provided comprehensive details of the alleged acts and listed the names of five alleged perpetrators. He specified that he had been beaten up – relentlessly kicked in the head and the spine – by the deputy director of the prison hospital and four

guards in the office of the former. As was further corroborated by written statements from his former cellmates which were attached to the complaint, the applicant could hardly walk and suffered from acute pains all over his body after the beating, especially along his lumbar spine. The applicant further stated in his complaint that his repeated requests for an immediate medical examination had initially been ignored, and it was only on 5 October 2012 that he had been allowed to undergo a medical scan the first time, the results of which (equally attached to the complaint) confirmed that he had received a spinal injury (protrusion of the fourth vertebra of his lumbar spine) a few months before.

4. In December 2012, given the absence of any reply, the applicant sent a reminder to the CPPO. The authorities responded on 28 December 2012, noting that the applicant's criminal complaint of 14 November 2012 was being studied.

5. On 17 January 2013 the applicant was released from prison based on an amnesty. Subsequently, he underwent a medical examination, the results of which confirmed again the existence of the relevant spinal damage (see paragraph 3 above), the origin of which coincided in time and in nature with the ill-treatment allegations. Having assessed the applicant's mental condition, the medical experts further concluded that the applicant suffered from a post-traumatic stress disorder.

6. Between January 2013 and November 2014, the applicant's lawyers, supplementing the criminal complaint with the freshly obtained medical evidence (see the preceding paragraph), repeatedly made enquiries (on eight occasions) with the public prosecutor in charge of the case about the progress of the investigation and requested that the applicant be granted victim status. They also requested that former cellmates of the applicant, who could corroborate his story, be questioned. Those repeated enquiries were either left unanswered, or the prosecution authorities would advise the applicant about the need to wait for certain investigative measures to be completed.

7. On 5 December 2014 the CPPO informed the applicant that his criminal complaint had been joined to a newly opened large-scale criminal investigation into the systematic ill-treatment of inmates at all prisons which had allegedly taken place in the country between 2010 and 2012 (hereinafter "the general prisons ill-treatment case").

8. On 23 August 2016 the CPPO opened another criminal investigation into the systematic ill-treatment of inmates which had allegedly taken place in the prison hospital between 2010 and 2012 ("the prison hospital ill-treatment case"). Within the framework of this criminal case, a former Head of the security guards of the prison hospital was convicted, on 13 January 2022, of the ill-treatment of inmates at the prison hospital, and the applicant was listed to be one of the numerous victims.

9. As regards the particular incident of 29 August 2012, none of the five perpetrators of the applicant's alleged ill-treatment has, according to the

available information, ever been charged or otherwise investigated in relation to the applicant's specific allegations (see paragraph 3 above). Furthermore, according to the latest notification from the CPPO available in the case file, dated 16 May 2018, the criminal investigation into the general-prisons ill-treatment case, which should normally include the incident of 29 August 2012, was still, at that time, pending in its early stage. The prosecution authority noted in the same notification that "given the lack of sufficient evidence", it was not possible to grant victim status to the applicant. The proceedings in this general-prisons ill-treatment case are currently still ongoing, but no other details about its progress are known.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

10. As regards the admissibility of the application, the Government submitted that the application had not been lodged with the Court with due expedition as required by Article 35 § 1 of the Convention, because the applicant had failed to voice his grievances before the relevant domestic authorities in a timely fashion. The applicant disagreed.

11. The Court observes that whilst the applicant had allegedly been subjected to ill-treatment on 29 August 2012, he voiced his grievances before the competent domestic authorities for the first time on 14 November 2012. This period of less than three months is not significant enough to question the applicant's due diligence, especially when assessed against the fact that the psychological effects of ill-treatment inflicted by State agents may undermine a victim's capacity to take the necessary steps to bring proceedings against a perpetrator without delay, when the victim remains within the same agents' control (see *Ochigava v. Georgia*, no. 14142/15, § 51, 16 February 2023). That being so, the Court is satisfied that the applicant voiced the grievances about his alleged ill-treatment before the competent domestic authorities in a timely fashion and, furthermore, made repeated attempts at regular intervals to enquire about the progress in the investigation, in the hope of an effective outcome, before lodging the present application (see paragraphs 3-7 above, and compare *Ochigava* cited above, § 52, with further references therein).

12. In the light of the foregoing, the Court does not see any reason to conclude that, at the time of lodging his application with the Court on 11 March 2015, the applicant had been aware, or should have been aware, for more than six months, of the lack of prospects for an effective criminal investigation. The Government's objection must therefore be dismissed. As the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds, it must therefore be declared admissible.

13. The Government did not contest the applicant's complaints on the merits, tacitly accepting the facts as submitted by the latter.

14. The relevant general principles concerning the procedural and substantive obligations under Article 3 of the Convention were summarised by the Court in the case of *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-88 and 114-23, ECHR 2015).

15. As regards the procedural obligations under Article 3, the Court reiterates that effective deterrence against serious acts such as intentional attacks on the physical integrity of a person requires efficient criminal-law response (compare, for instance, *Pulfer v. Albania*, no. 31959/13, § 71, 20 November 2018). However, the circumstances of the present case point to significant deficiencies in the respondent State's criminal response at stake. Notably, the Court observes that whilst the applicant formally voiced his complaint of ill-treatment as early as November 2012, giving all the details and even naming the alleged abusers, the competent domestic authorities have still not been able to investigate the applicant's case in its entirety and bring the perpetrators to justice. Whilst the domestic authorities secured a criminal conviction in relation to a senior prison officer with respect to systematic ill-treatment of inmates in the prison hospital in general (see paragraph 8 above), which was indeed a positive development, they clearly did not investigate the applicant's specific allegations concerning his beating by the five easily identifiable officers in August 2012 (see paragraphs 3 and 9 above, and compare with a similar situation, when conviction of only some of the prison officers implicated in ill-treatment was not deemed to be sufficient for the purposes of Article 3, in *Ochigava*, cited above, § 59). There were periods of unexplained inactivity on the part of the investigating authorities, and, what is more, the applicant has unjustifiably been denied the requisite procedural standing of an aggrieved party, which would have enabled him to closely follow the investigation, assess its reliability and contribute to its proper conduct (compare *Mindadze and Nemsitsveridze v. Georgia*, no. 21571/05, § 108, 1 June 2017). In this connection, the Court reiterates that "justice delayed is often justice denied", as the existence of unreasonable periods of inactivity and a lack of diligence on the authorities' part in conducting the proceedings may render the investigation ineffective (compare *Ochigava*, cited above, §§ 58-59).

16. As regards the complaint under the substantive limb of Article 3, the Court recalls that it already established in an almost identical case that, based on the relevant findings given by domestic courts in relation to the existence of an endemic problem of physical abuses of prisoners in various custodial institutions of the country, there had indeed been "systematic and systemic abuse" of inmates at a number of prisons in Georgia by representatives of the prison authority at the material time (compare *Ochigava*, cited above, §§ 7, 34 and 61). Attaching further significance to the fact that, in the present case, there exist sufficient medical evidence attesting the existence of the injuries

on the applicant's person, the origin of which coincided with the description of the alleged treatment, that the requisite negative inferences should be drawn from the domestic authorities' failure to conduct an effective investigation and that the Government did not even dispute the applicant's allegations (see paragraph 13 above, and compare, *ibidem.*, § 61), the Court endorses the relevant facts as submitted by the applicant and finds that his ill-treatment took place and was attributable to the respondent State.

17. In the light of the foregoing, the Court concludes that there has been a violation of both the substantive and procedural aspects of Article 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant claimed (a) 301 Georgian laris (approximately 112 euros (EUR)) in respect of pecuniary damage, explaining that such was the cost of a treatment for the spinal injury caused by the ill-treatment (see paragraph 5 above), (b) 5,000 EUR in respect of non-pecuniary damage and (c) 2,019 pounds sterling (approximately 2,350 euros) in respect of costs and expenses incurred in relation to his representation by the British lawyers before the Court.

19. The Government submitted that the claims were unsubstantiated and excessive.

20. The Court considers that there is a causal link between the violation found and the pecuniary damage alleged (compare *Meskhidze v. Georgia* [Committee], no. 55506/08, §§ 49-50, 21 December 2017). It thus awards the applicant, in view of the financial documents in its possession, EUR 112 in respect of pecuniary damage. It also finds that the applicant must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the relevant circumstances of the case, the principle of *non ultra petita* as well as to various equitable considerations, the Court finds it appropriate to award the applicant EUR 5,000 under this head, plus any tax that may be chargeable.

21. The Court further notes that the applicant did not submit financial documents sufficiently establishing that he had paid or was under a legal obligation to pay the fees charged by his British representatives or the expenses incurred by those representative (for an identical situation, see *Ochigava*, cited above, §§ 67-69). It follows that the claim for costs and expenses must be rejected.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under both the substantive and procedural limbs;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 112 (hundred and twelve euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Carlo Ranzoni President